



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMha12121627

[REDACTED]

Complainant,

v.

WATERS OF COVINGTON,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2(b).

On December 17, 2012, [REDACTED] ("Complainant") filed a Complaint with the Commission against Waters of Covington ("Respondent") alleging discrimination on the basis of disability in violation of the Indiana Civil Rights Law (Ind. Code § 22-9, *et. seq.*), the [REDACTED]. Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint.

An investigation has been completed. Both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was terminated because of her disability. In order to prevail, Complainant must show that: (1) she is a member of a protected class; (2) she suffered an adverse employment action; (3) she was meeting Respondent's legitimate business expectations; and (4) similarly-situated non-disabled employees were treated more favorably under similar circumstances.

Complainant is a member of a protected class by virtue of her disability and suffered an adverse employment action when she was discharged from her employment on or about November 21, 2012. Thus, the remaining questions are whether Complainant was meeting Respondent's legitimate business expectations and if she was treated less favorably than individuals without disabilities.



By way of background, Complainant was hired by Respondent as a Licensed Practical Nurse ("LPN") on or about June 8, 2010. At all times relevant to the Complaint, Complainant was aware of Respondent's employee handbook and specifically, its policies and procedures prohibiting excessive or unreported absences. On or about January 5, 2012, Complainant received an oral warning for attendance issues. This warning was memorialized in writing. Respondent alleges it orally admonished Complainant for attendance problems again on February 1, 2012.

On July 18, 2012, Complainant's physician informed Respondent on a FMLA application that she was trying to stabilize Complainant's blood glucose levels and that the fluctuating levels could interfere with her ability to function normally. Evidence indicates that upon being given this information, Respondent failed to enter into an interactive dialogue with Complainant to see if her attendance issues might have been caused or related to her medical condition. Rather, Respondent continued to discipline Complainant for absenteeism despite Complainant's assertions that she was ill. On October 10, 2012, Complainant received a write up for attendance and failure to complete certain nursing documentation. The warning also informed her that she would not be permitted to call off work for the following 90 days. However, on November 1, 2012, Complainant called off work again because she was having problems with her blood sugar levels; she received a one-day suspension and was told that all future call-ins had to be accompanied by a health care provider's note. Complainant called off on November 19 and November 20, 2012 because she felt ill. Upon her return, she returned a doctor's note; nevertheless, she was terminated on or about November 21, 2012 for excessive absenteeism. Neither Complainant nor Respondent is familiar with a LPN who suffered from similar attendance problems; thus, Complainant does not have a comparator. However, it appears that Respondent failed to engage in an interactive dialogue with Complainant as required under the civil rights laws. As such, there is probable cause to believe that an unlawful discriminatory practice occurred in this instance.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6

November 15, 2013

Date

Akia A. Haynes, Esq.,
Deputy Director
Indiana Civil Rights Commission